



## **FEDERAL MARITIME COMMISSION**

### **46 CFR Part 506**

**[DOCKET NO. 17-01]**

**RIN 3072-4C67**

### **Inflation Adjustment of Civil Monetary Penalties**

**AGENCY:** Federal Maritime Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission is publishing its adjustments to inflation annually, pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Act). The 2015 Act requires that agencies adjust and publish their civil penalties by January 15<sup>th</sup> each year.

**DATES:** This rule is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], and is applicable beginning January 15, 2017.

**FOR FURTHER INFORMATION CONTACT:** Tyler Wood, General Counsel, Federal Maritime Commission, 800 North Capitol Street, N.W., Room 1018, Washington, DC 20573, (202) 523-5740.

**SUPPLEMENTARY INFORMATION:** This rule adjusts the civil monetary penalties assessable by the Commission in accordance with the 2015 Act, which became effective on November 2, 2015. The 2015 Act further amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (FCPIAA), Pub. L. No. 101-410, 104 Stat. 890 (codified as amended at 28 U.S.C. 2461 note), in order to improve the effectiveness of civil monetary penalties and to maintain their deterrent effect.

The 2015 Act requires agencies to adjust CMPs under their jurisdiction by January 15, 2017, based on changes in the consumer price index (CPI-U) using data from October in the previous calendar year. On December 16, 2016, Office of Management and Budget published

guidance stating that the CPI-U multiplier for October 2016 is 1.01636.<sup>1</sup> In order to complete the adjustment for January 2017, agencies must multiply the most recent civil penalty amounts in 46 CFR part 506, i.e., those that include the catch-up adjustment required by the 2015 Act by 1.01636.<sup>2</sup> For the Commission, this means applying the multiplier to the penalty amounts set forth in the Commission’s June 30, 2016 interim final rule, which went into effect on August 1, 2016.<sup>3</sup>

## **Rulemaking Analyses and Notices**

### *Notice and Effective Date*

Adjustments under the FCPIAA, as amended by the 2015 Act, are not subject to the procedural rulemaking requirements of the Administrative Procedure Act (APA) (5 U.S.C. 553), including the requirements for prior notice, an opportunity for comment, and a delay between the issuance of a final rule and its effective date.<sup>4</sup> As noted above, the 2015 Act requires that the Commission adjust its CMPs no later than January 15 of each year.

### *Congressional Review Act*

The rule is not a “major rule” as defined by the Congressional Review Act, codified at 5 U.S.C. 801 *et seq.* The rule will not result in: (1) an annual effect on the economy of \$100,000,000 or more; (2) a major increase in costs or prices; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign-based companies. 5 U.S.C. 804(2).

### *Regulatory Flexibility Act*

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<sup>1</sup> Office of Management and Budget, M-17-11, Implementation of the 2017 annual adjustment pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, at 1 (Dec. 16, 2016) (M-17-11).

<sup>2</sup>*Id.* at 2-3.

<sup>3</sup> 81 FR 42552.

<sup>4</sup> FCPIAA § 4(b)(2); M-17-11 at 2.

The Regulatory Flexibility Act (codified as amended at 5 U.S.C. 601–612) provides that whenever an agency promulgates a final rule after being required to publish a notice of proposed rulemaking under the APA (5 U.S.C. 553), the agency must prepare and make available a final regulatory flexibility analysis (FRFA) describing the impact of the rule on small entities. 5 U.S.C. 604. As indicated above, this final rule is not subject to the APA’s notice and comment requirements, and the Commission is not required to prepare an FRFA in conjunction with this final rule.

#### *Paperwork Reduction Act*

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) requires an agency to seek and receive approval from the Office of Management and Budget (OMB) before collecting information from the public. 44 U.S.C. 3507. The agency must submit collections of information in rules to OMB in conjunction with the publication of the notice of proposed rulemaking. 5 CFR 1320.11. This final rule does not contain any collections of information, as defined by 44 U.S.C. 3502(3) and 5 CFR 1320.3(c).

#### *Regulation Identifier Number*

The Commission assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulatory and Deregulatory Actions (Unified Agenda). The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda, available at <http://www.reginfo.gov/public/do/eAgendaMain>.

List of Subjects in 46 CFR Part 506

Administrative practice and procedure, Penalties.

For the reasons stated in the preamble, Part 506 of title 46 of the Code of Federal Regulations is amended as follows:

**PART 506—CIVIL MONETARY PENALTY INFLATION ADJUSTMENT**

1. The authority citation for part 506 continues to read as follows:

**Authority:** 28 U.S.C. 2461.

2. Amend § 506.4 by revising paragraph (d) to read as follows:

**§ 506.4 Cost of living adjustments of civil monetary penalties.**

\* \* \* \* \*

(d) *Inflation adjustment.* Maximum Civil Monetary Penalties within the jurisdiction of the Federal Maritime Commission are adjusted for inflation as follows:

United States Code Citation	Civil Monetary Penalty description	Maximum penalty amount prior to January 15, 2017	Maximum penalty as of January 15, 2017
46 U.S.C. 42304	Adverse impact on U.S. carriers by foreign shipping practices	1,978,690	2,011,061
46 U.S.C. 41107(a)	Knowing and Willful violation/ Shipping Act of 1984, or Commission regulation or order	56,467	57,391
46 U.S.C. 41107(b)	Violation of Shipping Act of 1984, Commission regulation or order, not knowing and willful	11,293	11,478
46 U.S.C. 41108(b)	Operating in foreign commerce after tariff suspension	112,934	114,782
46 U.S.C. 42104	Failure to provide required reports, etc./ Merchant Marine Act of 1920	8,908	9,054
46 U.S.C. 42106	Adverse shipping conditions/Merchant Marine Act of 1920	1,781,560	1,810,706
46 U.S.C. 42108	Operating after tariff or service contract suspension/Merchant Marine Act of 1920	89,078	90,535
46 U.S.C. 44102	Failure to establish financial	22,500	22,868

	responsibility for non-performance of transportation	750	762
46 U.S.C. 44103	Failure to establish financial responsibility for death or injury	22,500 750	22,868 762
31 U.S.C. 3802(a)(1)	Program Fraud Civil Remedies Act/makes false claim	10,781	10,957
31 U.S.C. 3802(a)(2)	Program Fraud Civil Remedies Act/giving false statement	10,781	10,957

By the Commission.

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Secretary

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